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6 SECURITIES AND EXCHANGE COMMISSION  
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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE COMMISSION,

12 Plaintiff,

13 vs.

14 DIANE KAYSER,

15 Defendant.

Civil Action No.

[Proposed] FINAL JUDGMENT  
OF PERMANENT INJUNCTION  
AND OTHER RELIEF AGAINST  
DEFENDANT DIANE KAYSER

17 Plaintiff United States Securities and Exchange Commission ("Commission") has filed its  
18 Complaint for Permanent Injunction and Other Relief ("Complaint") in this action. Defendant Diane  
19 Kayser ("Defendant"), who was represented by counsel, has submitted the Consent of Defendant Diane  
20 Kayser to Entry of Final Judgment of Permanent Injunction and Other Relief ("Consent"), which was  
21 filed simultaneously with this [Proposed] Final Judgment of Permanent Injunction and Other Relief  
22 Against Defendant Diane Kayser ("Final Judgment") and incorporated herein by reference. In the  
23 Consent, Kayser waived service of the Summons and the Complaint, admitted the jurisdiction of this  
24 Court over her and over the subject matter of this action, admitted that she was fully advised and  
25 informed of the right to a judicial determination of this matter, waived findings of fact and conclusions  
26 of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this  
27

[Proposed] FINAL JUDGEMENT OF  
PERMANENT INJUNCTION AND OTHER RELIEF  
AGAINST DEFENDANT DIANE KAYSER

1 Final Judgment, without admitting or denying any of the allegations in the Complaint except as set forth  
2 in the Consent, and waived notice of hearing upon the entry of this Final Judgment. The Court, being  
3 fully advised, orders as follows:

4 I.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant and her agents,  
6 servants, employees, attorneys, and all persons in active concert or participation with any of them,  
7 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
8 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities  
9 Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated  
10 thereunder [17 C.F.R. § 240.10b-5] by using any means or instrumentality of interstate commerce, or  
11 of the mails, or of any facility of any national securities exchange, in connection with the purchase or  
12 sale of any security.

- 13 (a) to employ any device, scheme, or artifice to defraud;  
14 (b) to make any untrue statement of a material fact or omit to state a material fact  
15 necessary in order to make the statements made, in the light of the circumstances  
16 under which they were made, not misleading; or  
17 (c) to engage in any act, practice, or course of business which operates or would operate  
18 as a fraud or deceit upon any person.

19 II.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her  
21 agents, servants, employees and attorneys, and all persons in active concert or participation with any  
22 of them who receive actual notice of this Final Judgment by personal service or otherwise are  
23 permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the  
24 Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, 13a-13 and 13a-14  
25 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13 and 240.13a-  
26 14] by knowingly providing substantial assistance to an issuer which has a class of securities  
27 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the  
28

1 Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such accurate and complete  
2 information, reports, and documents as are required to be filed with the Commission pursuant to  
3 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Commission's Rules promulgated  
4 thereunder, including but not limited to, quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as  
5 prescribed by Commission Rule 13a-13 [17 C.F.R. § 240.13a-13], and current reports on Form 8-K  
6 [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-11 [17 C.F.R. § 240.13a-11], such  
7 information and documents to contain, in addition to such information as is expressly required to be  
8 included in a statement or report to the Commission, such further material information, if any, as may  
9 be necessary to make the required statements, in the light of the circumstances under which they are  
10 made, not misleading, as prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].  
11

12 III.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her  
14 agents, servants, employees and attorneys, and all persons in active concert or participation with any  
15 of them, who receive actual notice of this Final Judgment by personal service or otherwise are  
16 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of  
17 the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer which has a class of securities  
18 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the  
19 Exchange Act [15 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in  
20 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the  
21 issuer.

22 IV.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Kayser and her  
24 agents, servants, employees and attorneys, and all persons in active concert or participation with any  
25 of them, who receive actual notice of this Final Judgment by personal service or otherwise are  
26 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of  
27 the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer which has a class of securities  
28 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the

1 Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting  
2 controls sufficient to provide reasonable assurances that:

- 3       A. transactions are executed in accordance with management's general or specific  
4 authorization;
- 5       B. transactions are recorded as necessary (i) to permit preparation of financial statements in  
6 conformity with generally accepted accounting principles or any other criteria applicable to such  
7 statements, and (ii) to maintain accountability for assets;
- 8       C. access to assets is permitted only in accordance with management's general or specific  
9 authorization; and
- 10      D. the recorded accountability for assets is compared with the existing assets at reasonable  
11 intervals and appropriate action is taken with respect to any differences.

12

13

V.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her  
15 agents, servants, employees, attorneys, and all persons in active concert or participation with any of  
16 them, who receive actual notice of this Final Judgment by personal service or otherwise are  
17 permanently enjoined and restrained from, directly or indirectly, violating Section 13(b)(5) of the  
18 Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system  
19 of internal accounting controls or knowingly falsifying any book, record, or account described in  
20 Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

21

22

VI.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her  
24 agents, servants, employees and attorneys-in-fact, and all persons acting in concert or participation  
25 with any of them, who receive actual notice of this Final Judgment by personal service or otherwise,  
26 are permanently restrained and enjoined from, directly or indirectly, violating Rule 13b2-1 under the  
27 Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or  
28 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

1  
VII.

2 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her  
3 agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with  
4 any of them, who receive actual notice of this Final Judgment by personal service or otherwise, are  
5 permanently restrained and enjoined from violating Rule 13b2-2 of the Exchange Act [17 C.F.R.  
6 §240.13b2-2] by making or causing to be made a materially false or misleading statement, or by  
7 omitting to state or causing another person to omit to state, any material fact necessary in order to  
8 make statements made, in light of the circumstances under which such statements were made, not  
9 misleading, to an accountant in connection with (A) any audit or examination of the financial  
10 statements of an issuer required to be made pursuant to the federal securities laws or (B) the  
11 preparation or filing of any document or report required to be filed with the Commission pursuant to  
12 the federal securities laws or otherwise.

13

14  
VIII.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and  
16 her agents, servants, employees, attorneys, and all persons in active concert or participation with any  
17 of them, who receive actual notice of this Final Judgment by personal service or otherwise are  
18 permanently restrained and enjoined from violating, directly or indirectly, Section 13(a) of the  
19 Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14]  
20 by falsely certifying annual and quarterly reports filed with the Commission under Section 13(a) of  
21 the Exchange Act.

22

## IX.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to  
24 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited, for five years  
25 following the date of entry of this Final Judgment, from acting as an officer or director of any issuer  
26 that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]  
27 or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

28

## X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$35,000 pursuant to Section 21(d)(3) of the Exchange Act. Defendant shall make this payment pursuant to the terms of the payment schedule set forth in paragraph XI below after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and each payment shall be accompanied by a letter identifying Diane Kayser as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. A copy of the cover letter and payment shall be simultaneously transmitted to the attention of the District Administrator at the Commission's San Francisco District Office, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. Defendant shall pay additional post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

## XI.

Diane Kayser shall pay \$35,000 in three installment payments according to the following schedule: (a) \$11,666 within ten (10) business days of the entry of the Final Judgment; (b) \$12,241.88, consisting of penalty of \$11,666 and post-judgment interest of \$575.88, within 365 days of the entry of the Final Judgment; and (c) \$12,821.55, consisting of penalty of \$11,668 and post-judgment interest of \$1,153.55, within 730 days of the entry of Final Judgment.

If Diane Kayser fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment minus any payments made, shall become due and payable immediately without further application to the Court.

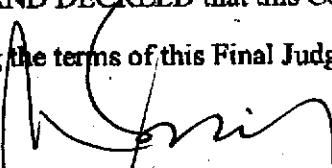
XII.

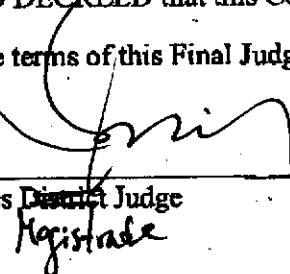
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XIII.

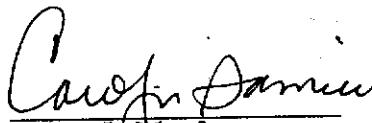
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated this 22 day of Sept, 2006

  
United States District Judge

  
Magistrate

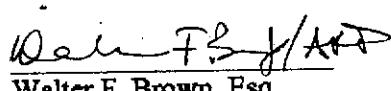
PRESENTED BY:



Helane L. Morrison  
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Patrick T. Murphy  
Carolyn Samiere

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44 Montgomery Street, Suite 2600  
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APPROVED AS TO FORM:



Walter F. Brown, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94104-5700  
(415) 773-5995  
Attorney for Defendant Diane Kayser

THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

Helane L. Morrison [morrisonh@sec.gov](mailto:morrisonh@sec.gov), [uclusinw@sec.gov](mailto:uclusinw@sec.gov)

Carolyn A. Samiere [SamiereC@sec.gov](mailto:SamiereC@sec.gov)

**A courtesy copy will be sent to:**

Cary S. Robnett  
Securities and Exchange Commission  
44 Montgomery Street  
Suite 1100  
San Francisco, CA 94104

Walter F. Brown, Esq.  
Orricke, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94104

Counsel are responsible for providing copies of this order to co-counsel and opposing counsel who have not signed up for e-filing.

Dated: 9/22/06

/s/ JMM  
Chambers of Magistrate Judge Lloyd